American Waste Management and Recycling, LLC. v. CEMEX Puerto Rico, Inc. et al Doc. 1 Att. 10

EXHIBIT 10

INDIANO & WILLIAMS, P.S.C.

DAVID C. INDIANO • JEFFREY M. WILLIAMS
SETH ERBE • ADA SOFIA ESTEVES • MARILUZ LAZCANO • JAIME A. TORRENS • INGRID M. RODRIGUEZ

June 27, 2007

VIA FAX AND REGULAR MAIL
787-763-7760
Rafael Mullet, Esq.
Toro, Colón, Mullet, Rivera & Sifre
P. O. Box 195383
San Juan, PR 00919

RE: American Waste Management & Recycling, LLC
O/F: (584) 693-001

Dear Rafael:

I write to you today regarding several issues that we spoke about yesterday regarding the stoppage at the site. Specifically, I would like to address three main issues with this letter: 1) containers with extracted material at the site; 2: equipment belonging to AWMR and security at the site; and 3) damages to AWMR.

1. Containers with extracted material at the site

As of this moment, the following containers are at the CEMEX site:

1) APZU 425846-1, out-gated since 04/03/2007 (86 days out of port)

2) TOLU 206932-7, out-gated since 04/09/2007 (80 days out of port)

3) MSKU 842980-4, out-gated since 05/31/2007 (28 days out of port)

4) PONU 710363-9, out-gated since 05/31/2007 (28 days out of port)

5) MSKU 806010-4, out-gated since 06/15/2007 (13 days out of port)

6) MSKU 869111-5, out-gated since 06/15/2007 (13 days out of port)

7) WFHU 501911-6, out-gated since 06/20/2007 (8 days out of port)

8) MEAU 832921-6, out-gated since 06/20/2007 (8 days out of port)

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Rafael Mullet, Esq.
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Our client had to wait to load these containers for some time, and brought these containers into CEMEX last Friday, with CEMEX's permission and with the understanding that they would be loaded and permitted to exit. As you know, that permission was not notified to you or Maribel González, but my point is that my client relied on that permission, and now, each day that these containers are held up, our client is faced with chassis demurrage charge as well as container demurrage charge. The demurrage charge are as follows, as per the port's policy:

From Day 1 to Day 4: Demurrage Fee Per Day is $8.75

From Day 5 to Day 9: Demurrage Fee Per Day is $20.00

From Day 10 to Day 16: Demurrage Fee Per Day is $30.00

From Day 17 to Day 999: Demurrage Fee Per Day is $50.00

As you can see, the charges are increasing greatly as each day passes.

The value of the goods in the containers is approximately $200,000.00 USD. These containers have been scheduled to sail this week, specifically, Friday. If they do not sail this week, our client will incur additional problems . 1) he will not be able to deliver the material already promised to several customers, as per his agreement with them. This is especially crucial as he already did not make a delivery of copper that was taken from the CEMEX site recently. 2) the longer our client hold the chassis and the containers, the shipping line and the port are going to charge him incrementally at higher and higher rates per day. Finally, as you know, sailing schedules for shipping are not that often; if our client misses this Friday's boat, he will be forced to wait almost one (1) month for the next container to ship.

I ask your fervent cooperation in letting these containers out of the CEMEX site as soon as possible so they can make their voyage on Friday on time. There should be no issue as to who removed the actual material from the plant – and consequently who it belongs to – as our client has been doing this work for three (3) months now.

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2. Equipment belonging to AWMR and security at the site

My client has some valuable equipment at the site, which he would like to remove in order to use it in other projects. Per yesterday's telephone and email agreement please let me know the earliest this can be done.

In line with this request, my client informs me that besides Ecoterra and himself, there are other contractors doing work at the site and he fears for the safety of the equipment that he will leave there (after what he needs can be removed). Since he was not allowed to inventory his equipment before leaving the premises, he asks that he be allowed to leave a member of his staff on site at all times to maintain an eye over the equipment. This person, per our agreement, would not be performing any work, but besides keeping an eye out, would perform maintenance on some equipment that needs to be oiled and taken care of.

Understanding that Ecoterra might want someone at the site as well, we are willing to accept only Engineer Howard at the site, who is a member of the Ecoterra staff but who has my client's trust.

3. Damages to AWMR

My client is facing a daily loss of between $20,000.00 to $25,000.00 USD approximately in labor, equipment, office and vehicle rentals, etc. for work stoppage.

As I has stated to you in yesterday's email, there are also safety issues pertaining to the structural integrity which are crucial, as our client was not given sufficient warning or time to secure the structures prior to leaving. In other words, work may be half-complete and there may be loose pipes or other items at the site that may be hazardous.

Additionally, there are metals that has been cut up and ready for loading that are stock-piled near the loading dock. If there is rain, water may collect resulting in problems with mosquitoes, which health officials already warned us about prior to beginning any project in Puerto Rico (i.e. Nile virus) . Furthermore, rain water accumulating and sitting on any part of the metal would also result in rust which creates a problem with our client to ship the metal and rust may also seep into the ground with the water. Our client did not have time to secure that section before exiting the premises.

My client's position is that CEMEX's sudden decision to ask them to cease work and leave the site while their equipment and other assets are still at the site, and then not allowing them access

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to them is creating serious concerns with reference to their insurance and liabilities, performance with customers, and other financial losses. While I understand your actions, I would appreciate your prompt cooperation in these areas while you get up to speed in this case.

I appreciate the speediness in you dealing with this issue, and look forward to your early response regarding this matter.

Cordially,

Ada Sofia Esteves

c. Mr. Abe Shah